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Cathy Brehany v. Nordstrom, Inc. : Addenda

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D. Gilbert Athay.

Max D. Wheeler; Stephen J. Hill; Stanley J. Preston; Snow, Christensen, and Martineau.

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UTAH SUPREME COURT
BRIEF

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April 4, 1988

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Mr. Geoffrey J. Butler, Clerk
Utah Supreme Court
322 State Capitol Building
Salt Lake City, Utah 84114

Re: Cathy Brehany v. Nordstrom, Inc.
Dennis Knapp, et al. v. Nordstrom, Inc.
Civil No. 20590

Dear Mr. Butler:

Pursuant to Rule 24(j) of the Rules of the Utah Supreme Court, defendant/appellant Nordstrom, Inc., submits an original and nine copies of the following response to respondent's citation of supplemental authorities.

A. In response to plaintiff/respondent's citation of cases in support of its claim for wrongful discharge based upon a breach of an implied contract, defendant/appellant cites the following cases in support of its position that, under Utah law, plaintiffs had no actionable wrongful discharge claim for breach of an implied contract, and that, as a matter of law, the Nordstrom Policy Manual does not create a binding implied contract to terminate plaintiffs only for cause:

1. Brumbaugh v. Ralston Purina Co., 656 F.Supp. 582 (S.D. Iowa 1987);

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2. Hostettler v. Pioneer Hi-Bred Intern., Inc.,
624 F.Supp. 169 (S.D. Ind. 1985);

3. Walker v. Westinghouse Elec. Corp., 77 N.C.App.
253, 335 S.E.2d 79, review denied, 315 N.C. 597, 341 S.E.2d
39 (1986); and

4. Anderberg v. Georgia Elec. Membership Corp.,
175 Ga.App. 14, 332 S.E.2d 326 (1985).

B. In response to the cases cited by plaintiff/respondent in support of its claim for breach of an implied covenant of good faith and fair dealing, defendant/appellant asserts that the case of Leithead v. American Colloid Co., 721 P.2d 1059 (Wyo. 1986), does not stand for the proposition for which it is cited by plaintiff/respondent and, in fact, Wyoming has rejected a cause of action for breach of an implied covenant of good faith and fair dealing in the employment setting. See Mobile Oil Producing, Inc. v. Parks, 704 P.2d 702 (Wyo. 1985).

Similarly, plaintiff/respondent has miscited Kinoshita v. Canadian Pacific Airlines, 724 P.2d 110 (Hawaii 1986), in support of its position that it has a claim for breach of an implied covenant of good faith and fair dealing. To the contrary, Hawaii has rejected a cause of action for breach of an implied covenant of good faith and fair dealing. See Parnar v. Americana Hotels, Inc., 65 Hawaii 370, 652 P.2d 625 (1982).

In further support of defendant/appellant's position that a majority of states have rejected a bad faith exception to the at-will rule (as set forth in Brief of Appellant at pp. 17-21), defendant/appellant cites cases from the following jurisdictions which have rejected the implied covenant of good faith and fair dealing cause of action in the context of employment at will:

1. Colorado: Pittman v. Larson Distributing Co.,
724 P.2d 1379 (Colo. App. 1986);

2. Connecticut: Magnan v. Anaconda Industries, Inc.,
193 Conn. 558, 479 A.2d 781 (1984).

3. District of Columbia: Minihan v. American
Pharmaceutical Ass'n., 812 F.2d 726 (D.C. Cir. 1987);

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4. Kansas: Greenlee v. Board of County Com'rs of Clay County, 740 P.2d 606 (Kan. 1987);

5. Illinois: Scott v. Sears, Roebuck & Co., 798 F.2d 210 (7th Cir. 1986);

6. Indiana: Hostettler v. Pioneer Hi-Bred Intern., Inc., 624 F.Supp. 169 (S.D. Ind. 1985);

7. Louisiana: Frichter v. National Life & Acc. Ins. Co., 620 F.Supp. 922 (E.D. La. 1985);

8. Maryland: Borowski v. Vitro Corp., 634 F.Supp 252 (D. Md. 1986), rev'd without opinion 829 F.2d 1119;

9. Minnesota: Dumas v. Kessler & Maguire Funeral Home 380 N.W.2d 544 (Minn. App. 1986);

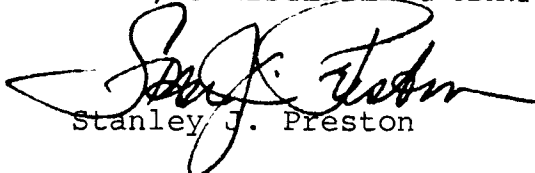
10. Nebraska: Jeffers v. Bishop Clarkson Memorial Hosp., 222 Neb. 829, 387 N.W.2d 692 (1986); and

11. New Mexico: Salazar v. Furr's Inc., 629 F.Supp. 1403 (D.N.M. 1986).

Thank you for your assistance in this matter.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU


Stanley J. Preston

SJP/jrb

cc: D. Gilbert Athay

AFFIDAVIT OF SERVICE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

JILL R. BROWN, being duly sworn, says that she is employed
in the law offices of Snow, Christensen & Martineau, attorneys
for Defendant/Appellant

herein; that she served the attached _____
response to respondent's citation of supplemental
authorities

(Case No. 20590, Utah Supreme Court)
upon the parties listed below by placing a true and correct
copy thereof in an envelope addressed to:

Attorney for Respondents:
D. Gilbert Athay
72 East 400 South, Suite 325
Salt Lake City, Utah 84111

and causing the same to be mailed first class, postage prepaid,
on the 4th day of April, 1988.

Jill R. Brown

SUBSCRIBED AND SWORN TO before me this 4th day of
April, 1988.

Nancy D. Hughes
NOTARY PUBLIC
Residing in the State of Utah

My Commission Expires:

1/22/91